

§ 550.162

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to act for the head of an agency in the matter concerned, is responsible for:

(a) Fixing tours of duty; ordering employees to remain at their stations in a standby status; and placing responsibility on employees for remaining on duty when required by circumstances.

(b) Determining, in accordance with section 5545(c) of title 5, United States Code, and this subpart, which employees shall receive premium pay on an annual basis under § 550.141 or § 550.151. These determinations may not be retroactive.

(c) Determining the number of hours of actual work to be customarily required in positions involving longer than ordinary periods of duty, a substantial part of which consists of standby duty. This determination shall be based on consideration of the time required by regular, repetitive operations, available records of the time required in the past by other activities, and any other information bearing on the number of hours of actual work which may reasonably be expected to be required in the future.

(d) Determining the number of hours of irregular or occasional overtime work to be customarily required in positions which require substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. This determination shall be based on consideration of available records of the hours of irregular or occasional overtime work required in the past, and any other information bearing on the number of hours of duty which may reasonably be expected to be required in the future.

(e) Determining the rate of premium pay fixed by OPM under § 550.144 or § 550.154 which is applicable to each employee paid under § 550.141 or § 550.151; or, if no rate fixed under § 550.144 or § 550.154 is considered applicable, proposing a rate of premium pay on an annual basis to OPM.

(f) Reviewing determinations under paragraphs (b), (c), (d) and (e) of this section at appropriate intervals, and discontinuing payments or revising rates of premium pay on an annual basis in each instance when that action

is necessary to meet the requirements of section 5545(c) of title 5, United States Code, and this subpart.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970]

§ 550.162 Payment provisions.

(a) Except as otherwise provided in this section, an employee's premium pay on an annual basis under § 550.141 or § 550.151 begins on the date that he enters on duty in the position concerned for purposes of basic pay, and ceases on the date that he ceases to be paid basic pay in the position.

(b) When an employee is in a position in which conditions warranting premium pay on an annual basis under § 550.141 or § 550.151 exist only during a certain period of the year, such as during a given season, an agency may pay the employee premium pay on an annual basis only during the period he is subject to these conditions.

(c) An agency may continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151:

(1) For a period of not more than 10 consecutive prescribed workdays on temporary assignment to other duties in which conditions do not warrant payment of premium pay on an annual basis, and for a total of not more than 30 workdays in a calendar year while on such a temporary assignment.

(2) For an aggregate period of not more than 60 prescribed workdays on temporary assignment to a formally approved program for advanced training duty directly related to duties for which premium pay on an annual basis is payable.

An agency may not continue to pay an employee premium pay on an annual basis under this paragraph for more than 60 workdays in a calendar year.

(d) When an employee is not entitled to premium pay on an annual basis under § 550.141, he is entitled to be paid for overtime, night, holiday, and Sunday work in accordance with other sections of this subpart.

(e) An agency shall continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151 while he is on leave with pay during a period in which premium pay on an annual basis is payable under paragraphs (a), (b), and (c) of this section.

(f) Unless an agency discontinues authorization of premium pay under § 550.141 or § 550.151 for all similar positions, it may not discontinue authorization of such premium pay for an individual employee's position—

(1) During a period of paid leave elected by the employee and approved by the agency in lieu of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*), following a job-related injury;

(2) During a period of continuation of pay under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*);

(3) During a period of leave without pay, if the employee is in receipt of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*). (Note: No premium pay is payable during leave without pay; however, the continued authorization may prevent a reduction in an employee's retirement benefits if the leave without pay period occurs during the employee's high-3 average salary period.)

(g) Notwithstanding paragraph (c)(1) of this section, an agency may continue to pay premium pay under § 550.151 to an employee during a temporary assignment that would not otherwise warrant the payment of AUO pay, if the temporary assignment is directly related to a national emergency declared by the President. An agency may continue to pay premium pay under § 550.151 for not more than 30 consecutive workdays for such a temporary assignment and for a total of not more than 90 workdays in a calendar year while on such a temporary assignment.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6312, Apr. 18, 1970; 64 FR 69175, Dec. 10, 1999; 67 FR 6641, Feb. 13, 2002; 68 FR 4681, Jan. 30, 2003]

§ 550.163 Relationship to other payments.

(a) An employee receiving premium pay on an annual basis under § 550.141 may not receive premium pay for regular overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accord-

ance with §§ 550.113 and 550.114 for irregular or occasional overtime work.

(b) An employee receiving premium pay on an annual basis under § 550.151 may not receive premium pay for irregular or occasional overtime work under any other section of this subpart. An agency shall pay the employee in accordance with other sections of this subpart for regular overtime work, and work at night, on Sundays, and on holidays.

(c) Overtime, night, holiday, or Sunday work paid under any statute other than subchapter V of chapter 55 of title 5, United States Code, is not a basis for payment of premium pay on an annual basis under § 550.141 or § 550.151.

(d) (1) Except as provided in paragraph (d)(2) of this section, premium pay on an annual basis under § 550.141 or § 550.151 is not base pay and is not included in the base used in computing foreign and nonforeign allowances and differentials, or any other benefits or deductions that are computed on base pay alone.

(2) Premium pay on an annual basis under § 550.141 is base pay for the purpose of section 5595(c), section 8114(e), section 8331(3), and section 8704(c) of title 5, United States Code.

(e) Premium pay on an annual basis under § 550.141 or § 550.151 may not be paid to a criminal investigator receiving availability pay under § 550.181.

[33 FR 12458, Sept. 4, 1968, as amended at 33 FR 19897, Dec. 28, 1968; 35 FR 6312, Apr. 18, 1970; 59 FR 66151, Dec. 23, 1994]

§ 550.164 Construction and computation of existing aggregate rates.

(a) Pursuant to section 208(b) of the act of September 1, 1954 (68 Stat. 1111), nothing in this subpart relating to the payment of premium pay on an annual basis may be construed to decrease the existing aggregate rate of pay of an employee on the rolls of an agency immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him by administrative action.

(b) When it is necessary to determine an employee's existing aggregate rate of pay (referred to in this section as existing aggregate rate), an agency shall determine it on the basis of the earnings the employee would have received